which cannot be cut down by a subsequent clause directing the disposition of any remainder which may be undisposed of at the death of the devisee.

Under a bequest to one or more persons living, and to the children of another who is dead, it is held, in *Collins* v. *Feather* (W. Va.) 61 L. R. A. 660, that the legatees will take *per capita* unless it appears from the context or some clause in the will, or from the circumstances in view of which it was made, that the testator intended a stirpital distribution.

EXECUTIONS—DEATH OF PLAINTIFF.—The death of a plaintiff in execution after execution has been issued and placed in the hands of the levying officer is held, in *Hatcher* v. *Lord* (Ga.) 61 L. R. A. 353, not to prevent the officer from enforcing the same, nor from making any entries thereon that may be necessary to prevent the dormancy of the judgment, even though there be no legal representative of the estate of plaintiff in execution, and no request be made by anyone interested in the judgment to have such entries made.

The other cases as to effect of death of one of the parties after judgment upon the remedy by execution are discussed in a note to this case.

NATIONAL BANKS—LIABILITY AS PARTNERS.—A national bank, established under the act of congress providing for such banks, can not be a member of a partnership, and can not become liable as partner.

A customer of a national bank being largely indebted to the bank, and being in failing circumstances, and being the owner of nine shares in a partnership consisting of forty shares, each evidenced by a certificate transferable on the books of the partnership, transferred his nine shares to the bank to secure payment of his indebtedness, the bank becoming the owner of such shares. *Held*, that such transfer did not in legal effect make said bank a partner, but a part owner in severalty of the property then owned by the partnership, and as such liable for nine-fortieth parts of the debts and expenses incurred in purchasing, holding, handling, managing, improving and disposing of said property. *Merchants National Bank* v. *Wehrman* (Ohio), 68 N. E. 1004.

FEDERAL PRACTICE—AMICUS CURIÆ—LEAVE TO FILE BRIEFS.—Leave to file briefs in a pending case as *amicus curiæ* will be denied where it does not appear that the applicant is interested in any other case which will be affected by the decision, and the parties are represented by competent counsel, whose consent has not been secured. *Northern Securities Co.* v. *U. S.*, 24 Sup. Ct. 119.

The Chief Justice:

"In support of this motion certain letters were presented showing that request was made of counsel for the respective parties for their consent to the application, and that they withheld direct consent, leaving the matter entirely to the court to determine. When the motion was submitted, objection to the granting of leave was made by counsel for appellees.

"Where, in a pending case, application to file briefs is made by counsel not employed therein, but interested in some other pending case involving sim-

ilar questions, and consent is given, the court has always exercised great liberality in permitting this to be done. And doubtless it is within our discretion to allow it in any case when justified by the circumstances. *Green* v. *Biddle*, 8 Wheat. 17, 5 L. ed. 551; *Florida* v. *Georgia*, 17 How. 491, 15 L. ed. 188; *The Gray Jacket*, 5 Wall. 370, 18 L. ed. 646. It does not appear that applicant is interested in any other case which will be affected by the decision of this case; as the parties are represented by competent counsel, the need of assistance cannot be assumed and consent has not been given."

EMINENT DOMAIN—EVIDENCE OF VALUE—OFFERS TO PURCHASE—RECORD ON APPEAL—DAMAGES TO ADJACENT PROPERTY—INSTRUCTIONS.—1. The testimony of an owner of real property of offers to purchase the same for hotel, residential, or amusement purposes, or for a ferry, or a railroad terminal, or to lease the property for hotel purposes, is inadmissible on the issue in condemnation proceedings as to the value of such property.

2. Statements by the court in his charge which refer to evidence which does not appear in a bill of exceptions not purporting to contain all the evidence, when not excepted to nor corrected by counsel, will be taken as supplementing the evidence in the record.

3. Just compensation to the owner of three absolutely separate and independent, though adjoining, farms, one of which only was taken in condemnation proceedings, does not demand an award of the damages to the two remaining farms, arising from the proposed use of the condemned property for military purposes.

4. The jury on a trial *de novo* upon an appeal from an award of commissioners in condemnation proceedings are properly instructed that they must be satisfied as to the value and damage by the testimony produced before them, without reference to any testimony produced before the commissioners, and that they must not be influenced by the commissioners' report. *Sharp* v. *U. S.*, 24 Sup. Ct. 114.

BANKRUPTCY—PREFERENCE—UNRECORDED CHATTEL MORTGAGES—AVOIDANCE—DATE OF TRANSFER.—Bankr. Act, sec. 3a, Act July 1, 1898, c 541, 30 Stat. 546 (U. S. Comp. St. 1901, p. 3422), declares a transfer of property while insolvent, with intent to prefer creditors, an act of bankruptcy, and, for filing a petition based on such an act, allows four months from the date of recording the instrument, or from the date of notorious exclusive possession by the beneficiary. Section 60a, 30 Stat. 562 (U. S. Comp. St. 1901, p. 3445), makes such a transfer as above enumerated a preference, and, if given within four months before the filing of the petition, the beneficiary having reason to believe that a preference was intended, declares it voidable by the trustee. *Held* that, in case of a preference by way of an unrecorded chattel mortgage, the transfer dates from the acquisition of possession under the mortgage. *Tatman* v. *Humphrey* (Mass.) 68 N. E. 844. Citing *Wilson* v. *Nelson*, 183 U. S. 191.

Per Knowlton, C. J:

"In *Matthews* v. *Hardt*, 79 App. Div. 570, 9 Am. Bankr. R. 373, 80 N. Y.